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Attorneys for Plaintiff
HOLLYNN D'LIL

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

HOLLYNN D'LIL,

CASE NO. _____
Civil Rights

Plaintiff,

v.

**COMPLAINT FOR INJUNCTIVE &
DECLARATORY RELIEF AND
DAMAGES:** DENIAL OF CIVIL
RIGHTS OF A DISABLED PERSON
IN VIOLATION OF THE AMERICANS
WITH DISABILITIES ACT OF 1990,
AND CALIFORNIA'S DISABLED
RIGHTS STATUTES

FLOOD GARAGE; AMERICAN PARKING
MANAGEMENT, INC.; PROPARK
AMERICA WEST, INC.; PATRICIA
NINO; LYNN WASSER; HARRIGAN,
WEIDENMULLER, CO.; PATRICIA L.
STEINER; PATRICIA L. STEINER
TRUST; DOE TRUSTEES 1-25; and
DOES 26-50, Inclusive,

DEMAND FOR JURY TRIAL

Defendants.

[Proper Intradistrict
Assignment:
San Francisco/Oakland]

_____/

Plaintiff HOLLYNN D'LIL, on behalf of herself and all other
similarly situated disabled persons, hereby complains of
defendants FLOOD GARAGE; AMERICAN PARKING MANAGEMENT, INC., a
California Corporation; PROPARK AMERICA WEST, INC. also dba Pro
Park America; PATRICIA NINO; LYNN WASSER; HARRIGAN,
WEIDENMULLER, CO., a California Corporation; PATRICIA L.
STEINER; PATRICIA L. STEINER TRUST; DOE TRUSTEES 1-25 of the
Patricia L. Steiner Trust; and DOES 26-50, Inclusive (hereafter
"defendants"), and demands a trial by jury, and alleges as

1 follows:

2
3 **INTRODUCTION**

4 1. Plaintiff HOLLYNN D'LIL is a person with physical
5 disabilities and utilizes a wheelchair for mobility. She files
6 suit against the owners and operators of the Flood Garage at 261
7 Ellis Street, San Francisco. Her goal in this suit is a
8 positive one: to increase the number of high-top-van parking
9 opportunities in the area for disabled persons.

10 2. The configuration of the garage, its paths of
11 travel, its unloading zones, service counters, public restrooms,
12 parking stalls, and operational policies all deny basic access
13 to persons with disabilities. The barriers include the absence
14 of a path of travel from valet and self-parking facilities to
15 the public sidewalk, including vertical access, the absence of
16 properly designated and designed unloading areas, the absence of
17 properly striped disabled accessible and van accessible parking
18 facilities, the inaccessible counters, and inaccessible public
19 restrooms.

20 3. These and other facilities at the garage all fail
21 to provide the "full and equal" access required by Title III of
22 the Americans With Disabilities Act of 1990; the California
23 Disabled Rights Acts (sections 54 and 54.1ff Civil Code); and
24 Title 24 of the California Code of Regulations (now known as the
25 California Building Code). As a result, plaintiff was denied,
26 and continues to be denied, access and/or is deterred from re-
27 visiting the garage, all in violation of her Civil Rights to
28 full and equal access, and is embarrassed, humiliated and upset,

1 all to her statutory and general damage. Plaintiff seeks
2 injunctive and injunctive relief requiring provision of access
3 under the Americans With Disabilities Act of 1990 at section
4 308(a); injunctive relief for "full and equal access" under
5 California law; and statutory damages for plaintiff under
6 California law.

7
8 **JURISDICTION AND VENUE**

9 4. This Court has jurisdiction of this action
10 pursuant to 28 U.S.C. 1331 for violations of the Americans with
11 Disabilities Act of 1990, 42 U.S.C. 12101, *et seq.* Pursuant to
12 pendant jurisdiction, attendant and related causes of action,
13 arising from the same facts, are also brought under California
14 law, including but not limited to violations of California
15 Health & Safety Code Sections 19955 *et seq.*, including Section
16 19959; Title 24 California Code of Regulations; and California
17 Civil Code Sections 54 and 54.1 *et seq.*

18 5. Venue is proper in this court pursuant to
19 28 U.S.C. 1391(b) and is founded on the fact that the real
20 property which is the subject of this action is located in this
21 district and that plaintiff's causes of action arose in this
22 district.

23 6. **Intradistrict Jurisdiction.** Under intradistrict
24 as the real property that is the subject of this action is
25 located in the San Francisco/Oakland intradistrict and
26 plaintiff's causes of action arose in the San Francisco/Oakland
27 intradistrict (a property located in San Francisco).

28 ////

PARTIES

7. At all times relevant to this complaint, plaintiff qualified as a "person with a disability," as this term is used under California law and under federal laws including but not limited to Title III of the Americans With Disabilities Act of 1990.

8. Plaintiff's physical condition and paralysis requires the use of a wheelchair for traveling about in public places.

9. At all times relevant herein, defendants FLOOD GARAGE; AMERICAN PARKING MANAGEMENT, INC.; PROPARK AMERICA WEST, INC.; PATRICIA NINO; LYNN WASSER; HARRIGAN, WEIDENMULLER, CO.; PATRICIA L. STEINER; PATRICIA L. STEINER TRUST; DOE TRUSTEES 1-25; and DOES 26-50, Inclusive, were and/or are the controlling public entities, or the current, future or prospective owners and operators, lessors and/or lessees of public facilities, and subject to the requirements of California State law requiring full and equal access to public facilities pursuant to Sections 4450 et seq. Government Code; 19955 et seq. Health & Safety Code; Sections 51, 54, and 54.1, Civil Code; and subject to Title III of the Americans With Disabilities Act of 1990, and to all other legal requirements referred to in this complaint. Plaintiff does not know the relative responsibilities of defendants in the ownership, control, and operation of the facilities herein complained of, and alleges a joint venture and common enterprise by all such defendants.

10. Plaintiff is informed and believes that each of the defendants herein, including DOES 1 through 50, inclusive,

1 is the joint authority, controlling interest, owner,
2 constructive owner, beneficial owner, trust, trustee, agent,
3 ostensible agent, alter ego, master, servant, employer,
4 employee, representative, franchiser, franchisee, joint
5 venturer, partner, associate, parent company, subsidiary, board,
6 commission, department, representative, or such similar
7 capacity, of each of the other defendants, and was at all times
8 acting and performing, or failing to act or perform, within the
9 course and scope of his, her or its authority as a joint
10 authority, constructive owner, beneficial owner, agent, trust,
11 trustee, ostensible agent, alter ego, master, servant, employer,
12 employee, representative, franchiser, franchisee, joint
13 venturer, partner, associate, parent company, subsidiary, board,
14 commission, department, representative, or such similar
15 capacity, and with the authorization, consent, permission or
16 ratification of each of the other defendants, and is responsible
17 in some manner for the acts and omissions of the other
18 defendants in proximately causing the violations and damages
19 complained of herein, and have approved or ratified each of the
20 acts or omissions of each other defendant, as herein described.
21 Plaintiff will seek leave to amend when the true names,
22 capacities, connections, and responsibilities of defendants
23 FLOOD GARAGE; AMERICAN PARKING MANAGEMENT, INC.; PROPARK AMERICA
24 WEST, INC.; PATRICIA NINO; LYNN WASSER; HARRIGAN, WEIDENMULLER,
25 CO.; PATRICIA L. STEINER; PATRICIA L. STEINER TRUST; DOE
26 TRUSTEES 1-25; and DOES 26-50, Inclusive, are ascertained.

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28

1 **FACTUAL ALLEGATIONS**

2 11. The garage and its facilities, including its
3 parking facilities, paths of travel, vertical means of access,
4 unloading areas, service counters, public restrooms, and other
5 facilities, are each a "public accommodation or facility"
6 subject to the requirements of Government Code sections 4450 et
7 seq., Health & Safety Code Section 19955 et seq., and of the
8 California Civil Code sections 51, 54, 54.1, and 54.3. On
9 information and belief, each such facility has, since January 1,
10 1968, undergone unfinished "new construction," and/or
11 "alterations, structural repairs, and additions," each of which
12 has subjected the subject garage and its public facilities to
13 state disabled access requirements per section 4456 Government
14 Code, 19959 Health and Safety Code, and since July 1, 1982, per
15 provisions of Title 24 of the California Code of Regulations.

16 12. Plaintiff Hollynn D'Lil drives an high top, lift-
17 equipped van. On or about July 20, 2008, she visited the Flood
18 Garage in her van while downtown on her personal affairs. Upon
19 entering and seeking directions from the attendant, she
20 discovered that the garage lacked any disabled accessible
21 parking or self-parking for the disabled. When she asked to
22 park across two spaces to avoid being blocked out from
23 reentering her vehicle by the prospect of another parked
24 vehicle, she was informed that she would be charged more than
25 the going rate for doing so, and that she would be required to
26 leave her keys as a valet customer.

27 13. Plaintiff seeks actual and deterrence damages.
28 Plaintiff has had the garage inspected by her representatives,

1 and has confirmed that the barriers are pervasive and are
2 encountered by similarly situated users with mobility
3 disabilities throughout the garage, including the following
4 major barriers:

5 (1) Failure to provide a safe and accessible
6 path of travel and vertical means of access from the self-
7 parking facilities to the main pedestrian entrance area.

8 (2) Failure to provide safe and accessible
9 unloading area fully complying with the requirements of the
10 code.

11 (3) Failure to provide safe and accessible
12 disabled parking facilities fully complying with the
13 requirements of the code.

14 (4) Failure to provide accessible service
15 counter facilities.

16 (5) Failure to provide accessible public
17 restroom facilities.

18 (6) Failure to modify, draft or implement
19 policies, practices, and procedures, and provide adequate
20 training and information to staff, so as to maintain accessible
21 parking facilities and their availability, or otherwise provide
22 access through reasonable alternative accommodations and
23 methods.

24 14. On information and belief, defendants have failed
25 to provide disabled wheelchair users with access to multiple
26 other facilities on site, including the valet, rental and detail
27 areas. The additional barriers that a disabled person in
28 plaintiff's position would encounter on site cannot be

1 determined without a formal inspection by a professional
2 consultant with unfettered access to make observations and take
3 measurements.

4 15. Plaintiff has complained in writing to
5 defendants, and, on information and belief, defendants have
6 knowledge, or received notice, of plaintiff's complaints and
7 the inability of like persons to use facilities at the subject
8 garage. Despite knowledge of the access problems, and
9 complaints from other disabled patrons, and the passage of
10 extended time since plaintiff and other disabled persons first
11 provided notice of these deficiencies, defendants have failed
12 to investigate these problems, and have failed to take the
13 necessary action to provide legally required access features
14 to allow "full and equal" use of the premises by physically
15 disabled persons.

16 16. The removal of all such barriers was required
17 by Title III of the ADA, section 302 and/or section 303 of the
18 ADA, and California law.

19 17. Plaintiff would like to return and use the
20 facilities at the garage for her trips downtown, but is
21 prevented from doing so on a full and equal basis by the
22 barriers and discriminatory situation described herein.

23 18. On information and belief, as a result of all
24 defendants' above stated acts and omissions, plaintiff
25 suffered loss of her Civil Rights, suffered emotional damages
26 normally and naturally associated with denial of one's civil
27 rights and thereby being treated like a second class citizen,
28 all to her damage.

1 19. Moreover, plaintiff and other similarly
 2 situated disabled persons will continue to be damaged on a
 3 continuous basis as long as defendants fail to provide proper
 4 disabled access in the respects complained of, as they will
 5 either be discouraged from using subject garage, or would make
 6 the visit despite the obstacles to access they would have to
 7 encounter, and suffer additional discriminatory experiences.

8 20. Plaintiff has no adequate remedy at law as to
 9 the recurring damages facing her each time she returns to
 10 these inaccessible facilities. Unless the relief requested
 11 herein is granted, plaintiff and many other physically
 12 disabled persons will each suffer irreparable harm in that
 13 their fundamental right to accessible public facilities while
 14 patronizing the subject garage will be denied and abridged.

15
 16 **FIRST CAUSE OF ACTION:**

17 **VIOLATIONS OF TITLE III**

18 **OF THE AMERICANS WITH DISABILITIES ACT OF 1990**

19 **42 USC §§ 12101ff**

20 21. Plaintiff repleads and incorporates, as if fully
 21 set forth again herein, the factual allegations contained in
 22 paragraphs 1 through 20, above.

23 22. In 1990 the United States Congress made findings
 24 per 42 U.S.C. Section 12101 regarding physically disabled
 25 persons, finding that laws were needed to more fully protect
 26 "some 43 million Americans with one or more physical or mental
 27 disabilities;" that "historically society has tended to isolate
 28 and segregate individuals with disabilities;" that "such forms

1 of discrimination against individuals with disabilities continue
 2 to be a serious and pervasive social problem;" that "the
 3 Nation's proper goals regarding individuals with disabilities
 4 are to assure equality of opportunity, full participation,
 5 independent living and economic self sufficiency for such
 6 individuals;" and that "the continuing existence of unfair and
 7 unnecessary discrimination and prejudice denies people with
 8 disabilities the opportunity to compete on an equal basis and to
 9 pursue those opportunities for which our free society is
 10 justifiably famous..."

11 23. Congress stated as its purpose in passing the
 12 Americans with Disabilities Act (42 USC § 12101(b)):

13 It is the purpose of this act –

14 (1) to provide a clear and comprehensive
 15 national mandate for the elimination of
 16 discrimination against individuals with
 17 disabilities;

18 (2) to provide clear, strong, consistent,
 19 enforceable standards addressing discrimination
 20 against individuals with disabilities;

21 (3) to ensure that the Federal government plays
 22 a central role in enforcing the standards
 23 established in this act on behalf of individuals
 24 with disabilities; and

25 (4) to invoke the sweep of Congressional
 26 authority, including the power to enforce the 14th
 27 Amendment and to regulate commerce, in order to
 28 address the major areas of discrimination faced day

1 to day by people with disabilities. (Emphasis
2 added)

3 24. As part of the Americans with Disabilities Act,
4 Public Law 101-336, (hereinafter the "ADA"), Congress passed
5 "Title III - Public Accommodations and Services Operated by
6 Private Entities" (42 U.S.C 12181ff). Among the Act's "covered
7 entities" are "public accommodations," "rental facilities,"
8 "service establishments," and "commercial facilities."

9 25. Pursuant to Section 302 [42 U.S.C 12182], "[n]o
10 individual shall be discriminated against on the basis of
11 disability in the full and equal enjoyment of the goods,
12 services, facilities, privileges, advantages, or accommodations
13 of any place of public accommodation by any person who owns,
14 leases, or leases to, or operates a place of public
15 accommodation."

16 26. Among the general prohibitions of discrimination
17 included in Section 302(b)(1)(A) are the following:

18 § 302(b)(1)(A)(i): "DENIAL OF PARTICIPATION. —

19 It shall be discriminatory to subject an individual
20 or class of individuals on the basis of a disability
21 or disabilities of such individual or class,
22 directly, or through contractual, licensing, or
23 other arrangements, to a denial of the opportunity
24 of the individual or class to participate in or
25 benefit from the goods, services, facilities,
26 privileges, advantages, or accommodations of an
27 entity."

28 § 302(b)(1)(A)(ii): "PARTICIPATION IN UNEQUAL

1 BENEFIT – It shall be discriminatory to afford an
 2 individual or class of individuals, on the basis of
 3 a disability or disabilities of such individual or
 4 class, directly, or through contractual, licensing,
 5 or other arrangements with the opportunity to
 6 participate in or benefit from a good, service,
 7 facility, privilege, advantage, or accommodation
 8 that is not equal to that afforded to other
 9 individuals."

10 § 302(b)(1)(A)(iii): "SEPARATE BENEFIT. – It
 11 shall be discriminatory to provide an individual or
 12 class of individuals, on the basis of a disability
 13 or disabilities of such individual or class,
 14 directly, or through contractual, licensing, or
 15 other arrangements with a good, service, facility,
 16 privilege, advantage, or accommodation that is
 17 different or separate from that provided to other
 18 individuals, unless such action is necessary to
 19 provide the individual or class of individuals with
 20 a good, service, facility, privilege, advantage, or
 21 accommodation, or other opportunity that is as
 22 effective as that provided to others."

23 27. The acts and omissions at defendant's garage, as
 24 described herein, constitute "discrimination" in violation of
 25 Section 302(b)(1)(A).

26 28. Among the specific prohibitions against
 27 discrimination in the ADA include the following:

28 § 302(b)(2)(A)(ii): "A failure to make

1 reasonable modifications in policies, practices or
2 procedures when such modifications are necessary to
3 afford such goods, services, facilities, privileges,
4 advantages or accommodations to individuals with
5 disabilities..."

6 § 302(b)(2)(A)(iii): "A failure to take such
7 steps as may be necessary to ensure that no
8 individual with a disability is excluded, denied
9 services, segregated or otherwise treated differently
10 than other individuals because of the absence of
11 auxiliary aids and services, unless the entity can
12 demonstrate that taking such steps would
13 fundamentally alter the nature of the good, service,
14 facility, privilege, advantage, or accommodation
15 being offered or would result in an undue burden;"

16 § 302(b)(2)(A)(iv): "A failure to remove
17 architectural barriers, and communication barriers
18 that are structural in nature, in existing
19 facilities... where such removal is readily
20 achievable;"

21 § 302(b)(2)(A)(v): "Where an entity can
22 demonstrate that the removal of a barrier under
23 clause (iv) is not readily achievable, a failure to
24 make such goods, services, facilities, privileges,
25 advantages, or accommodations available through
26 alternative methods if such methods are readily
27 achievable." The acts and omissions of defendants
28 set forth herein were in violation of plaintiff's

1 rights under the ADA, Public Law 101-336, and the
2 regulations promulgated thereunder, 28 CFR Part
3 36ff.

4 29. The facilities, acts and omissions at defendant's
5 garage, as described herein, constitute "discrimination" in
6 violation of Section 302(b)(2)(A).

7 30. The removal of each of the barriers complained of
8 by plaintiff as hereinabove alleged (i.e., in paragraphs 12
9 through 14, above) were - at all times on or after January 26,
10 1992 - "readily achievable."

11 31. Further, at all times herein mentioned,
12 modification of or removal of these barriers was "readily
13 achievable" under the factors specified in the Americans with
14 Disabilities Act of 1990, including but not limited to
15 section 301(9) [42 U.S.C. 12181], and the Regulations adopted
16 thereto.

17 32. Further, if defendants are collectively able to
18 "demonstrate" that it was not "readily achievable" for
19 defendants to remove each of such barriers, defendants have
20 failed to make the required services available through
21 alternative methods which were readily achievable, as required
22 by Section 302 of the ADA [42 U.S.C. 12182], or through
23 reasonable modifications in policy, practices and procedures.

24 33. "Discrimination" is further defined under
25 Section 303(a)(2) of the ADA, for a facility or part thereof
26 that was altered after the effective date of Section 303 of the
27 ADA in such a manner as to affect or that could affect the
28 usability of the facility or part thereof by persons with

1 disabilities, to include per Section 303(a)(2) [42 U.S.C.
2 12183], "a failure to make alterations in such a manner that, to
3 the maximum extent feasible, the altered portions of the
4 facility are readily accessible to and usable by individuals
5 with disabilities, including individuals who use wheelchairs."
6 Additionally, for alterations to areas of a facility involving a
7 "primary function," discrimination under the ADA, per Section
8 303(a)(2) (42 U.S.C. 12183), also includes the failure of an
9 entity "to make the alterations in such a manner that, to the
10 maximum extent feasible, the path of travel to the altered area
11 and the bathrooms, telephones, and drinking fountains serving
12 the altered area, are readily accessible to and usable by
13 individuals with disabilities." On information and belief, the
14 subject building constitutes a "commercial facility," and
15 defendants have, since the date of enactment of the ADA,
16 performed alterations (including alterations to areas of primary
17 function) to the subject building and its facilities, public
18 accommodations, and commercial facilities, which fail to provide
19 facilities and paths of travel to such areas that are readily
20 accessible to and usable by individuals with disabilities, in
21 violation of Section 303(a)(2), and the regulations promulgated
22 thereunder, 28 CFR Part 36ff.

23 34. Pursuant to the Americans with Disabilities Act,
24 42 USC 12188ff, Section 308, plaintiff is entitled to the
25 remedies and procedures set forth in Section 204, subsection
26 (a), of the Civil Rights Act of 1964 (42 USC 2000a-3, at
27 subsection (a)), as plaintiff is being subjected to
28 discrimination on the basis of disability in violation of this

1 title or has reasonable grounds for believing that she is about
 2 to be subjected to discrimination in violation of Sections 302
 3 and 303. On information and belief, defendants have continued
 4 to violate the law and deny the rights of plaintiff and of other
 5 disabled persons to access this public accommodation. Pursuant
 6 to Section 308(a)(2), "[i]n cases of violations of
 7 Section 302(b)(2)(A)(iv)... injunctive relief shall include an
 8 order to alter facilities to make such facilities readily
 9 accessible to and usable by individuals with disabilities to the
 10 extent required by this title."

11 35. As a result of defendants' acts and omissions in
 12 this regard, plaintiff has been required to incur legal expenses
 13 and attorney fees, as provided by statute, in order to enforce
 14 plaintiff's rights and to enforce provisions of the law
 15 protecting access for disabled persons and prohibiting
 16 discrimination against disabled persons. Plaintiff therefore
 17 seeks recovery of all reasonable attorneys' fees, litigation
 18 expenses (including expert fees) and costs, pursuant to the
 19 provisions of Section 505 of the ADA (42 U.S.C. 12205) and the
 20 Department of Justice's regulations for enforcement of Title III
 21 of the ADA (28 CFR 36.505). Additionally, plaintiff's lawsuit
 22 is intended not only to obtain compensation for damages to
 23 plaintiff, but also to require the defendants to make their
 24 facilities accessible to all disabled members of the public,
 25 justifying "public interest" attorneys' fees pursuant to the
 26 provisions of California Code of Civil Procedure Section 1021.5.

27 WHEREFORE, plaintiffs prays that this Court grant
 28 relief as hereinafter stated:

1 **SECOND CAUSE OF ACTION:**

2 **DENIAL OF FULL AND EQUAL ACCESS TO A PERSON WITH A DISABILITY**

3 **IN A PUBLIC FACILITY,**

4 **IN VIOLATION OF CALIFORNIA'S DISABLED ACCESS STATUTES**

5 36. Plaintiff repleads and incorporates by reference,
6 as if fully set forth again herein, the allegations contained in
7 Paragraphs 1 through 35 of this complaint and incorporates them
8 herein as if separately repld.

9 37. Plaintiff Hollynn D'Lil, and other similarly
10 situated physically disabled persons (whose physical conditions
11 require the use of a wheelchair or other mobility device are
12 unable to use public facilities at subject garage on a "full and
13 equal" basis unless such facilities are brought into compliance
14 with the provisions of California Health & Safety Code sections
15 19955 et seq. Plaintiff is a member of that portion of the
16 public whose rights are protected by the provisions of
17 sections 19955 et seq. Health & Safety Code.

18 38. Under section 54.1 Civil Code, persons with
19 disabilities are entitled to "full and equal access" to public
20 accommodations. "Public accommodations" are further defined as
21 a building, structure, facility complex, or improved area which
22 is used by the general public and shall include parking lots,
23 paths of travel, counters, and attendant facilities.

24 39. Defendants participate in the operation of the
25 subject public accommodation, subjecting the property and all
26 such defendants to the requirements of California's Disabled
27 Rights statutes.

28 40. Health & Safety Code Section 19955 provides in

1 pertinent part:

2 (a) The purpose of this part is to insure that
 3 public accommodations or facilities constructed in
 4 this state with private funds adhere to the
 5 provisions of Chapter 7 (commencing with § 4450) of
 6 Division 5 of Title 1 of the Government Code. For
 7 the purposes of this part "public accommodation or
 8 facilities" means a building, structure, facility,
 9 complex, or improved area which is used by the
 10 general public and shall include auditoriums,
 11 hospitals, theaters, restaurants, hotels, motels,
 12 stadiums, and conventions centers.

13 41. Health and Safety Code Section 19956, which
 14 appears in the same chapter as 19955, provides, in pertinent
 15 part: "[a]ll public accommodations constructed in this state
 16 shall conform to the provisions of Chapter 7 (commencing with
 17 § 4450) of Division 5 of Title 1 of the Government Code...."

18 42. Section 19956 Health & Safety Code was operative
 19 July 1, 1970, and is applicable to all public accommodations
 20 constructed or altered after that date. On information and
 21 belief, portions of the subject building were constructed and/or
 22 altered after July 1, 1970, and portions of the subject building
 23 were structurally remodeled, altered and have undergone
 24 structural repairs or additions after July 1, 1970. Such
 25 construction required such building and its public accommodation
 26 facilities to be subject to the requirements of Part 5.5,
 27 Sections 19955, et seq., of the Health and Safety Code, which
 28 requires provision of access upon "alterations, structural

1 repairs or additions" per Section 19959 Health & Safety Code, or
2 upon a change of occupancy (a form of "alteration").

3 43. Multiple construction, alterations, structural
4 repairs and/or additions were completed on the subject garage
5 property after the January 1, 1968 effective date of Government
6 Code Sections 4450 et seq., and the July 1, 1970 effective date
7 of Health & Safety Code Section 19955-19959, legally requiring
8 that proper access for disabled persons be provided in each and
9 every regard complained of herein.

10 44. Construction or alteration at such facilities
11 also triggered access requirements pursuant to section 4456
12 Government Code and Title 24 of the California Code of
13 Regulations. Further, section 19955 Health & Safety Code also
14 requires that, "[w]hen sanitary facilities are made available
15 for the public, clients or employees in such accommodations or
16 facilities, they shall be made available for the physically
17 handicapped." Title 24, California Code of Regulations
18 (formerly known as the California Administrative Code and now
19 known as the California Building Code), was in effect at the
20 time of each alteration which, on information and belief,
21 occurred at such public facility since January 1, 1982, thus
22 requiring access complying with the specifications of Title 24
23 whenever each such "alteration, structural repair or addition"
24 is carried out. Title 24 imposes additional access requirements
25 with which defendants have not complied, including additional
26 requirements for accessible restrooms which serve the areas of
27 alteration.

28 45. As a result of the actions and failure to act of

1 defendants and each of them, and as a result of the failure to
2 provide proper disabled accessible facilities as above
3 described, plaintiff Hollynn D'Lil was denied her Civil Rights,
4 including her right to full and equal access to public
5 facilities, was embarrassed, humiliated and upset in a manner
6 normally and naturally associated with denial of one's civil
7 rights, all to her general damages in an amount within the
8 jurisdiction of this Court.

9 46. Plaintiff seeks ongoing damages on a per-incident
10 basis for each occasion of denial and/or basis.

11 47. As a result of the defendants' continuing failure
12 to provide proper access for disabled persons to use the public
13 facilities, plaintiff and other, similarly-situated disabled
14 persons are being continually denied their rights to full and
15 equal access to subject garage and its attendant facilities.

16 48. The acts and omissions of defendants as
17 complained of herein exist on a continuing basis and have the
18 effect of wrongfully excluding, and/or discriminating against,
19 plaintiff and other members of the public who are physically
20 disabled wheelchair users from full and equal access to the
21 public facilities involved. Such acts and omissions continue to
22 treat them as inferior and a second class citizens and serve to
23 discriminate against their on the sole basis that they are
24 physically disabled and require the use of a wheelchair for
25 movement in public places, or require the use of disabled
26 accessible facilities such as handicap parking; plaintiff is
27 unable, so long as such acts and omissions of defendants
28 continue, to achieve full and equal access to these public

1 facilities. The acts of defendants have proximately caused and
 2 will continue to cause irreparable injury to plaintiff if not
 3 enjoined by this court.

4 49. WHEREFORE, plaintiff asks this court to
 5 preliminarily and permanently enjoin any continuing refusal by
 6 those defendants which currently own, operate or lease the
 7 premises, or who control such premises as the operating public
 8 entities, to grant such access to plaintiff and other similarly
 9 situated persons, and to require such defendants to comply
 10 forthwith with the applicable statutory requirements relating to
 11 access for the disabled. Such injunctive relief is provided by
 12 section 19953 Health & Safety Code and California Civil Code
 13 section 55. Plaintiff further request that the court award
 14 statutory attorneys' fees, litigation expenses and costs to
 15 plaintiff pursuant to section 19953 Health & Safety Code, Civil
 16 Code section 55, and Code of Civil Procedure section 1021.5, all
 17 as hereinafter prayed for.

18
 19 **THIRD CAUSE OF ACTION:**

20 **VIOLATION OF CALIFORNIA'S DISABLED RIGHTS ACTS**

21 **(§§54, 54.1 and 55 CIVIL CODE)**

22 50. Plaintiff repleads and incorporates by reference,
 23 as if fully set forth again herein, the allegations contained in
 24 paragraphs 1 through 49 of this complaint and incorporates them
 25 herein as if separately repiled.

26 51. The aforementioned acts and omissions of
 27 defendants and each of them constitute a denial of equal access
 28 to and use and enjoyment of these facilities by persons with

1 disabilities, including plaintiff Hollynn D'Lil. Said acts and
2 omissions are also in violation of provisions of Title 24 of the
3 California Administrative Code (later known as the California
4 Code of Regulations and the California Building Code.)

5 52. On or about the above date complained of herein,
6 and on other occasions certain to occur thereafter, including
7 occasions of deterrence, plaintiff Hollynn D'Lil has and will
8 suffer violations of sections 54 and 54.1 Civil Code in that she
9 has and will be denied full and equal access to the subject
10 garage facilities on the basis that she is a physically disabled
11 person.

12 53. Plaintiff is further informed and believes that
13 before and after such dates, the named defendants and each of
14 them were made aware orally, in writing, and through the media
15 and governmental sources of the inaccessibility of their public
16 facility/business to disabled persons, such as plaintiff, and
17 other persons with disabilities similarly situated, and of the
18 federal and state legal obligations of owners and operators of
19 public facilities to make their facilities accessible to
20 disabled persons. Despite being informed of such effect on
21 disabled persons and the manner in which their practices and
22 lack of acceptable facilities were continuing to discriminate
23 against disabled persons on a continuous basis, said defendants
24 and each of them knowingly and willfully failed and refused to
25 take any steps to rectify this situation and to provide full and
26 equal access for disabled persons to each public facility
27 referred to herein.

28 54. At all times since plaintiff's above specified

1 complaints, and on information and belief for periods prior to
2 this date, defendants were on notice of the requirements of the
3 law relating to provision for full and equal disabled access.
4 Especially as defendants were on full notice, each incident that
5 defendants deny or deter plaintiff's access constitutes a new
6 and distinct violation of her right to full and equal access to
7 this public facility, in violation of Sections 54 and 54.1, et
8 seq. Civil Code. In the event of a default judgment against any
9 particular defendant, plaintiff will seek an injunction
10 requiring provision of all access called for in this complaint,
11 plus damages of \$4,000 per incident of denial or deterrence as
12 demonstrated at a prove-up hearing, plus reasonable attorneys'
13 fees, litigation expenses and costs as set by the court, until
14 the site is brought into full compliance with state and federal
15 access laws protecting the rights of the disabled, or,
16 alternatively, until the date of entry of default.

17 55. As a result of the denial of equal access to
18 defendants' facilities due to the acts and omissions of
19 defendants and each of them in owning, operating, and
20 maintaining this subject public facility, plaintiff Hollynn
21 D'Lil suffered violations of her Civil Rights including but not
22 limited to rights under sections 54 and 54.1 Civil Code, and
23 suffered emotional distress, embarrassment, upset and
24 humiliation normally and natural associated with denial of one's
25 civil rights, all to her damages as hereinafter stated.
26 Defendants' actions and omissions to act constituted
27 discrimination against plaintiff on the sole basis that she was
28 physically disabled and unable, because of the architectural

1 barriers created by the defendants in violation of the subject
2 laws, to use the public facilities on a full and equal basis as
3 other persons.

4 56. Plaintiff seeks ongoing damages on a per-incident
5 basis for each occasion of denial and/or basis.

6 57. Subject to the terms of the preceding paragraph,
7 plaintiff also seeks damages against all defendants for the
8 violation of her rights as a person with a disability during her
9 patronage at the subject garage, and, on information and belief,
10 on occasions of deterrence or denial that are likely to occur
11 thereafter, according to proof, pursuant to section 54.3 Civil
12 Code, including a trebling of all statutory and actual damages,
13 general and special, available pursuant to section 54.3 Civil
14 Code. Plaintiff also seeks such damages for such defendants'
15 continuing maintenance of such facilities in an inaccessible
16 condition. Plaintiff also seeks injunctive relief against all
17 defendants pursuant to section 55 Civil Code, requiring
18 defendants to make their facilities accessible to disabled
19 persons in each of the respects complained of herein.

20 58. As a result of defendants' acts and omissions in
21 this regard, plaintiff HOLLYNN D'LIL has been required to incur
22 legal expenses and hire an attorney in order to enforce
23 plaintiff's rights and enforce provisions of the law protecting
24 access for persons with disabilities and prohibiting
25 discrimination against persons with disabilities. Plaintiff
26 therefore seeks recovery in this lawsuit for all reasonable
27 attorneys' fees and costs incurred pursuant to the provisions of
28 sections 54.3 and 55 Civil Code. Additionally, plaintiff's

lawsuit is intended not only to obtain compensation for damages to plaintiff, but also to require the defendants to make their facilities accessible to all disabled members of the public, conferring a significant public benefit, and justifying attorneys' fees, litigation expenses and costs pursuant to the provisions of section 1021.5 Code of Civil Procedure.

WHEREFORE, plaintiff prays for damages and declaratory and injunctive relief as hereinafter stated.

FOURTH CAUSE OF ACTION:

DAMAGES AND INJUNCTIVE RELIEF FOR VIOLATION OF TITLES III OF THE AMERICANS WITH DISABILITIES ACT UNDER CALIFORNIA'S DISABLED RIGHTS ACT

59. Plaintiff repleads and incorporates by reference, as if fully set forth again herein, the allegations contained in paragraphs 1 through 58 of this complaint and incorporates them herein as if separately repled.

60. Each violation of the Americans With Disabilities Act of 1990, as complained of in the First Cause of Action hereinabove (the contents of which is incorporated herein as if separately repled in full hereafter), is also a violation of section 54(c) and section 54.1(d) California Civil Code, further and independently justifying damages, injunctive and other statutory relief per section 54.3 and 55 California Civil Code.

61. As previously pled, plaintiff seeks damages on a per incident basis from her aforementioned visit and continuing thereafter.

62. Plaintiff has no adequate remedy at law, and

1 unless the relief requested herein is granted, plaintiff will
 2 suffer irreparable harm in that they will continue to be
 3 discriminated against and denied access to the specified public
 4 facilities. Because plaintiff seeks improvement of access for
 5 persons with disabilities, which will benefit a significant
 6 portion of the public, plaintiff seeks attorneys' fees pursuant
 7 to section 1021.5 California Code of Civil Procedure, section
 8 54.3 and 55 Civil Code; and 19953 Health & Safety Code.

9 WHEREFORE, plaintiff prays for relief as hereinafter
 10 stated.

11
 12 **FIFTH CAUSE OF ACTION:**

13 **DAMAGES AND INJUNCTIVE RELIEF UNDER THE UNRUH CIVIL RIGHTS ACT**
 14 **FOR VIOLATION OF TITLE III OF THE**
 15 **AMERICANS WITH DISABILITIES ACT**

16 63. Plaintiff repleads and incorporates by reference,
 17 as if fully set forth again herein, the allegations contained in
 18 Paragraphs 1 through 62 of this complaint and incorporates them
 19 herein as if separately repled.

20 64. Each violation of the Americans With Disabilities
 21 Act of 1990, as complained of in the First Cause of Action
 22 hereinabove (the contents of which is hereby incorporated herein
 23 as if separately repled in full hereafter), is also a violation
 24 of section 51(f) of the Unruh Civil Rights Act, further and
 25 independently justifying damages of \$4,000 per offense,
 26 injunctive relief, and other statutory relief, all as previously
 27 pled, per sections 52 and common law decision.

28 65. As previously pled, plaintiff seeks damages on a

1 per incident basis from her aforementioned visit and continuing
2 thereafter.

3 66. As a result of defendants' acts and omissions in
4 this regard, plaintiff has been required to incur legal expenses
5 and attorney fees, as provided by statute, in order to enforce
6 plaintiff's rights and to enforce provisions of the law
7 protecting access for disabled persons and prohibiting
8 discrimination against disabled persons. Plaintiff therefore
9 seeks recovery of all reasonable attorneys' fees, litigation
10 expenses (including expert fees) and costs, pursuant to the
11 provisions of Section 52 of the Civil Code. Because plaintiff
12 seeks improvement of access for persons with disabilities, which
13 will benefit a significant portion of the public, plaintiff
14 seeks attorneys' fees pursuant to section 1021.5 California Code
15 of Civil Procedure, section 55 Civil Code; and 19953 Health &
16 Safety Code.

17
18 **SIXTH CAUSE OF ACTION**

19 **(Declaratory Relief)**

20 67. Plaintiff repleads and incorporates by reference,
21 as if fully set forth again herein, the allegations contained in
22 Paragraphs 1 through 65 of this complaint and incorporates them
23 herein as if separately repled.

24 68. A present and actual controversy exists among the
25 respective rights and obligations of plaintiff and defendants,
26 and separately, as to the obligations that have been impressed by
27 the aforementioned statutes against the garage property
28 irrespective of past or future ownership. Plaintiff requests a

1 judicial determination of her rights and such obligations in a
2 declaration, and also as to whether and to what extent
3 defendants' conduct and the current configuration of the property
4 violates applicable law.

5 69. Such a declaration is necessary and appropriate at
6 this time in order that plaintiff may ascertain her rights. Such
7 declaration is further necessary and appropriate to prevent
8 further harm or infringement of Plaintiff's Civil Rights.

9 Wherefore, plaintiff prays the court grant relief as
10 requested hereinbelow.

11
12 **PRAYER FOR RELIEF**

13 Plaintiff prays that this Court award damages and
14 provide relief as follows:

15 1. Grant injunctive relief requiring that those of
16 the defendants which currently own, operate, control or lease
17 the subject premises, repair the premises and render them safe
18 to disabled persons, and modify their policies and procedures,
19 and otherwise provide "full and equal access" to the public
20 areas herein complained of, and make such facilities "readily
21 accessible to and usable by individuals with disabilities,"
22 according to the standards of sections 51, 54 and 54.1 et seq.
23 of the California Civil Code; Title 24 of the California
24 Administrative Code; Sections 19955-19959 of the Health & Safety
25 Code; Sections 4450-4456 of the California Government Code;
26 Title III of the Americans With Disabilities Act of 1990; the
27 Americans With Disabilities Act Access Guidelines; and provide
28 full and equal access to physically disabled persons, including

1 plaintiff, in all manners required by such statutes and
2 government regulations;

3 2. Retain jurisdiction over the defendants until
4 such time as the Court is satisfied that defendants' unlawful
5 policies, practices, acts and omissions, and provision of
6 discriminatory, separate and unequal benefits, as complained of
7 herein, no longer exist, and will not recur;

8 3. Issue a declaratory judgment that defendants'
9 actions and omissions, and failures, including to modify the
10 premises in compliance with the law, and to make reasonable
11 accommodations and reasonable modifications for plaintiff and
12 other similarly situated disabled persons violates the rights
13 plaintiff and other similarly situated persons rights under the
14 Health & Safety Code Sections 19955-19959; Government Code
15 Sections 4450-4455; Civil Code Sections 51, 54, and 54.1 et
16 seq.; Americans With Disabilities Act of 1990, 42 U.S.C.
17 sections 12101, et seq., and the regulations promulgated
18 thereunder.

19 4. Issue a declaratory judgment regarding the
20 obligations impressed by law against the garage, and declaring
21 that plaintiff is entitled to disabled accessible and usable
22 subject garage facilities including its parking facilities,
23 paths of travel, and counter facilities, and other facilities,
24 so that they may make use of the public facilities and
25 participate in the activities offered by defendants without
26 suffering discrimination or impediment on the basis of her
27 disability;

28 5. An award of statutory and "actual" damages

1 against all defendants, including general damages and special
2 damages, according to proof, against such defendants pursuant to
3 sections 52 and 54.3 Civil Code, and that these damages be
4 trebled;

5 6. Award prejudgment interest on all compensatory
6 damages;

7 7. Award all costs of this proceeding and all
8 reasonable attorneys' fees, litigation expenses and costs as
9 provided by law, including but not limited to those recoverable
10 pursuant to the provisions of sections 54.3 and 55 Civil Code,
11 section 1021.5 Code of Civil Procedure, section 19953 Health &
12 Safety Code, and section 505 of the Americans With Disabilities
13 Act; and

14 8. Grant such other and further relief as this Court
15 may deem just and equitable.

16
17 Dated: September 15, 2008

THIMESCH LAW OFFICES
TIMOTHY S. THIMESCH



Attorneys for Plaintiff
HOLLYNN D'LIL

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22 **DEMAND FOR JURY TRIAL**

23 Plaintiff demands a jury on all claims for which a
24 jury is permitted.

25
26 Dated: September 15, 2008



Attorneys for Plaintiff
HOLLYNN D'LIL